

RCRA REVISION CHECKLIST 113

Consolidated Liability Requirements

53 FR 33938-33960

September 1, 1988

56 FR 30200

July 1, 1991

57 FR 42832-42844

September 16, 1992

(RCRA Cluster III, Non-HSWA provisions)

Notes:

1) This special consolidated checklist addresses changes made to the Federal code by the September 1, 1988 final rule (53 FR 33938, withheld Revision Checklist 51) as well as amendments made by the July 1, 1991 (56 FR 30200, withheld Revision Checklist 93) and the September 16, 1992 (57 FR 42832) final rules. The September 1, 1988 rule was the subject of litigation and its checklist, Revision Checklist 51, was withheld by EPA to encourage States not to adopt those changes until a final settlement agreement could be reached and implemented. The July 1, 1991 and September 16, 1992 rules were promulgated to make the revisions mandated by the settlement agreement. Now that all requirements of the settlement agreement have been met, EPA is issuing this Consolidated Liability Requirements Checklist to aid States in correctly adopting the changes made by these three rules.

Revision Checklists 51 and 93 will not be issued individually. Rather, States should use this Consolidated Liability Requirements Checklist to adopt the provisions of the three final rules. States that have already adopted changes based on the September 1, 1988 final rule are strongly encouraged to complete this consolidated checklist to ensure that all revisions pursuant to the two amendments are correctly made in the State's code. Note that the deadline for this consolidated checklist is July 1, 1994, based on the promulgation date of the most recent of the amendments.

2) In the September 1, 1988 final rule, all changes were classified as less stringent and, therefore, optional with regard to State adoption. Note that, as part of the settlement agreement with Chemical Waste Management, Inc., the claims reporting requirements were reclassified as more stringent and, therefore, required for State adoption. Only those changes marked as optional (†) in this consolidated checklist should be considered less stringent provisions. The September 16, 1992 rule modified the claims reporting requirements (264.147(a)(7)&(b)(7) and 265.147(a)(7)&(b)(7)) and they are less stringent than the claim reporting requirements promulgated in the September 1, 1988 rule. Thus, States which have already adopted the September 1, 1988 provisions are not required to adopt the "clarified" reporting requirements of the September 16, 1992 rule, although EPA strongly encourages them to do so. States that did not adopt the September 1, 1988 claims reporting requirements should not do so but should, instead, adopt the clarified September 16, 1992 version included in this consolidated checklist.

3) This checklist includes a "rule" reference column. To simplify references to the three rules addressed by this checklist, "51" will signify the September 1, 1988 rule, "93" will signify the July 1, 1991 rule, and "113" will indicate the September 16, 1992 rule.

4) There were several typographical errors in the September 1, 1988 Federal Register article. These are explained in endnotes in this consolidated checklist.

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

5) The optional designation (†) is placed in the margin of the consolidated checklist if a checklist introduced a new optional paragraph into the Federal code. If a checklist addresses optional changes to an existing paragraph, the optional designation is placed beside the corresponding checklist number.

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
PART 264 - STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES							
SUBPART H - FINANCIAL REQUIREMENTS							
DEFINITIONS OF TERMS AS USED IN THIS SUBPART							
add new paragraph defining "substantial business relationship"	51	264.141(h)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
FINANCIAL ASSURANCE FOR CLOSURE							
remove "hereafter referred to as `corporate guarantee'" from first sentence; insert "direct or higher-tier" before "parent corporation"; add phrase regarding sibling firms and firms with substantial business relationships to end of second sentence; remove "corporate" before "guarantee" in three places; insert "certified copy of the" before "guarantee must accompany"; add text regarding letter from guarantor's chief financial officer and what the letter must describe	†113	264.143(f)(10)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
FINANCIAL ASSURANCE FOR POST-CLOSURE CARE							
replace "of" with "for" in the first sentence; remove "hereafter referred to as 'corporate guarantee'"; insert "direct or higher-tier" before "parent corporation"; add phrase regarding sibling firms and firms with substantial business relationships to end of second sentence; remove "corporate" before "guarantee" in three places; insert "A certified copy of" after "§ 264.151(h)."; change "The corporate" to "the corporate"; add text regarding letter from guarantor's chief financial officer and what the letter must describe	†113	264.145(f)(11)					
LIABILITY REQUIREMENTS							
delete "in one of three ways"; replace "and (3)" with "(3), (4), (5), or (6)"	†51	264.147(a)					
insert "or" after "owner"; delete "corporate" before "guarantee"; change "paragraph (g)" to "paragraphs (f) and (g)"	†51,93	264.147(a)(2)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
replace existing paragraph; requirements may be met by obtaining letter of credit for liability coverage	†51	264.147(a)(3)					
† add new paragraph; requirements may be met by obtaining surety bond for liability coverage	51	264.147(a)(4)					
† add new paragraph; requirements may be met by obtaining trust fund for liability coverage	51	264.147(a)(5)					
† add new paragraph; liability coverage may be demonstrated by combination of financial mechanisms; amount of coverage must total at least the minimum amounts required by 264.147; specification of "primary" and "excess" coverage	51	264.147(a)(6)					
2 add and amend new paragraph; notify Regional Administrator in writing whenever:	51113	264.147(a)(7)					
22 add and amend new subparagraph; claims reduce amount of financial assurance for liability coverage	51113	264.147(a)(7)(i)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
22 Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence is entered between the owner or operator and a third-party claimant	51113	264.147(a)(7)(ii)					
22 final court order establishing judgment for bodily injury or property damage caused by sudden or non-sudden accidental occurrence is issued against the owner or operator or an instrument providing financial assurance	113	264.147(a)(7)(iii)					
3 change "miscellaneous disposal unit" to "disposal miscellaneous unit"; after "legal defense costs" insert text regarding combination of per-occurrence coverage levels for sudden and non-sudden accidental occurrences, single annual aggregate level, and requirements for combining coverage; delete "in one of three ways,"; replace "and (3)" with "(3), (4), (5), or (6),"	†51,93	264.147(b)					
delete "corporate" before "guarantee"	†51	264.147(b)(2)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
replace existing paragraph; requirements may be met by obtaining letter of credit for liability coverage	†51	264.147(b)(3)					
replace existing paragraph; requirements may be met by obtaining surety bond for liability coverage	†51	264.147(b)(4)					
† add new paragraph; requirements may be met by obtaining trust fund for liability coverage	51	264.147(b)(5)					
† add new paragraph; liability coverage may be demonstrated by combination of mechanisms; amount of coverage must total at least the minimum amount required by 264.147; specification of "primary" and "excess" coverage	51	264.147(b)(6)					
22 add and amend new paragraph; notify Regional Administrator in writing whenever:	51113	264.147(b)(7)					
22 add and amend new subparagraph; claims reduce amount of financial assurance for liability coverage	51113	264.147(b)(7)(i)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
22 add and amend new subparagraph; Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence is entered between the owner or operator and a third-party claimant	51113	264.147(b)(7)(ii)					
22 add new subparagraph; final court order establishing judgment for bodily injury or property damage caused by sudden or non-sudden accidental occurrence is issued against the owner or operator or an instrument providing financial assurance	113	264.147(b)(7)(iii)					
insert ", a letter of credit, a surety bond, a trust fund, or a guarantee" after "obtain insurance"; replace "Evidence of insurance" with "Evidence of liability coverage"	†113	264.147(f)(6)					
remove "corporate" before "guarantee"	†51	264.147(g)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
remove "corporate" before "guarantee" in three places; insert "direct or higher-tier" before "parent"; after "parent corporation of the owner or operator" insert ", a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a `substantial business relationship' with the owner or operator."; change "The guarantee must meet" to "The guarantor must meet"; change "(f)(7)" to "(f)(6)"; add "of this part" after "§ 264.151(h)(2)"; replace "The terms of the corporate guarantee must provide that:" with text regarding letter from the guarantor's chief financial officer	†51	264.147(g)(1)					
4 remove and reserve	†51	264.147(g)(1)(ii)					
remove "corporate" before "guarantee"	†51	264.147(g)(2)(i)					
remove "corporate" before "guarantee"	†51	264.147(g)(2)(ii)					
redesignate old paragraph (h) as (k); add new paragraph titled "Letter of credit for liability coverage"	†51	264.147(h)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
†,5 requirements may be satisfied by obtaining irrevocable standby letter of credit that conforms to 264.147(h) requirements and submitting copy to Regional Administrator	51	264.147(h)(1)					
† criteria for financial institution issuing letter of credit	51	264.147(h)(2)					
† wording of letter of credit must be identical to wording specified in 264.151(k)	51	264.147(h)(3)					
† establishment and use of standby trust fund by owner or operator using letter of credit	113	264.147(h)(4)					
† wording of standby trust fund must be identical to wording specified in 264.151(n)	113	264.147(h)(5)					
† add new paragraph titled "Surety bond for liability coverage"	51	264.147(i)					
† requirements may be satisfied by obtaining surety bond conforming to 264.147(i) requirements and submitting copy to Regional Administrator	51	264.147(i)(1)					
† criterion for surety company issuing bond	51	264.147(i)(2)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
† wording of surety bond must be identical to wording specified in 264.151(l)	51	264.147(i)(3)					
† conditions under which surety bond may be used	51	264.147(i)(4)					
		264.147(i)(4)(i)					
		264.147(i)(4)(ii)					
† add new paragraph titled "Trust fund for liability coverage"	51	264.147(j)					
† requirements may be satisfied by establishing trust fund and submitting an originally signed duplicate of trust agreement to Regional Administrator	51	264.147(j)(1)					
† criteria for trustee	51	264.147(j)(2)					
† trust fund must be funded for full amount of liability coverage it is to provide; requirements if fund is reduced below full amount; definition of "full amount"	51	264.147(j)(3)					
† wording of trust fund must be identical to wording specified in 264.151(m)	51	264.147(j)(4)					
old paragraph 264.147(h) becomes 264.147(k)	†51	264.147(k)					

WORDING OF THE INSTRUMENTS

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
add text given at 53 <u>FR</u> 33952 to end of "Financial Guarantee Bond"	†51	264.151(b)					
6 replace wording of letter from chief financial officer for closure and/or post-closure care with that shown at 57 <u>FR</u> 42836 & 42837	†113	264.151(f)					
7,8 replace wording of letter from chief financial officer for liability coverage with that shown at 57 <u>FR</u> 42837 & 42838	51,†113	264.151(g)					
9 replace wording of corporate guarantee for closure and/or post-closure care with that shown at 57 <u>FR</u> 42838 & 42839	†113	264.151(h)(1)					
10 replace wording of guarantee for liability coverage with that shown at <u>FR</u> 42839 & 42840	†51,113	264.151(h)(2)					
after "insured" add other entities that may cancel endorsement; delete "sixty" before "60"	†51	264.151(i)(2)(d)					
11 after "insured" add other entities that may cancel endorsement; delete "sixty" before "60"	†51	264.151(j)(2)(d)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
12 add new introductory subparagraph and wording for letter of credit for liability coverage as shown at 57 <u>FR</u> 42840 & 42841	†51,113	264.151(k)					
13 add new introductory subparagraph and wording for surety bond as shown at 53 <u>FR</u> 33955 & 33956	†51	264.151(l)					
add new introductory subparagraph and wording for trust agreement as shown at 53 <u>FR</u> 33956-33958	†51	264.151(m)(1)					
†,14 add new introductory subparagraph and example of certification of acknowledgement as shown at 53 <u>FR</u> 33958, third column	51	264.151(m)(2)					
†,15 add new introductory subparagraph and wording for standby trust agreement as shown at 57 <u>FR</u> 42841-42843	113	264.151(n)(1)					
† add new introductory subparagraph and wording for certification of acknowledgement to accompany trust agreement, as shown at 57 <u>FR</u> 42843, first and second columns	113	264.151(n)(2)					

PART 265 - INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS
WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
SUBPART H - FINANCIAL REQUIREMENTS							
DEFINITIONS OF TERMS AS USED IN THIS SUBPART							
add new paragraph defining "substantial business relationship"	51	265.141(h)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
FINANCIAL ASSURANCE FOR CLOSURE							
remove "hereafter referred to as `corporate guarantee'" from first sentence; insert "direct or higher-tier" before "parent corporation"; add phrase regarding sibling firms and firms with substantial business relationships to end of second sentence; remove "corporate" before "guarantee" in three places; insert "A certified copy of" after "§ 264.151(h)."; change "The" to "the"; add text regarding letter from guarantor's chief financial officer and what the letter must describe	†113	265.143(e)(10)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
FINANCIAL ASSURANCE FOR POST-CLOSURE CARE							
remove "hereafter referred to as `corporate guarantee'" from first sentence; insert "direct or higher tier" before "parent corporation"; add phrase regarding sibling firms and firms with substantial business relationships to end of second sentence; remove "corporate" before "guarantee" in three places; insert "A certified copy of" after "§ 264.151(h)."; change "The" to "the"; add text regarding letter from guarantor's chief financial officer and what the letter must describe	†113	265.145(e)(11)					
LIABILITY REQUIREMENTS							
delete "By the effective date of these regulations"; change "an" to "An"; delete "in one of three ways,"; replace "and (3)" with "(3), (4), (5), or (6)"	†51	265.147(a)					
delete "corporate" before "guarantee"; change "paragraph (g)" to "paragraphs (f) and (g)"	†51.93	265.147(a)(2)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
replace existing paragraph; requirements may be met by obtaining letter of credit for liability coverage	†51	265.147(a)(3)					
† add new paragraph; requirements may be met by obtaining surety bond for liability coverage	51	265.147(a)(4)					
† add new paragraph; requirements may be met by obtaining trust fund for liability coverage	51	265.147(a)(5)					
† add new paragraph; liability coverage may be demonstrated by combination of mechanisms; amount of coverage must total at least the minimum amounts required by 265.147; specification of "primary" and "excess" coverage	51	265.147(a)(6)					
19 add new paragraph; notify Regional Administrator in writing whenever:	51113	265.147(a)(7)					
1919 add new subparagraph; claims reduce amount of financial assurance for liability coverage	51113	265.147(a)(7)(i)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
1919 Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence is entered between the owner or operator and a third-party claimant	51113	265.147(a)(7)(ii)					
1919 final court order establishing judgment for bodily injury or property damage caused by sudden or non-sudden accidental occurrence is issued against the owner or operator or an instrument providing financial assurance	113	265.147(a)(7)(iii)					
change "bodily damage" to "bodily injury"; after "legal defense costs." insert text regarding combination of per-occurrence coverage levels for sudden and non-sudden accidental occurrences, single annual aggregate level, and requirements for combining coverage; delete "in one of three ways,"; replace "and (3)" with "(3), (4), (5), or (6)"	†51	265.147(b)					
delete "corporate" before "guarantee"	†51	265.147(b)(2)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
replace existing paragraph; requirements may be met by obtaining letter of credit for liability coverage	†51	265.147(b)(3)					
replace existing paragraph and subparagraphs; requirements may be met by obtaining surety bond for liability coverage	†51	265.147(b)(4)					
20 replace existing paragraph; requirements may be met by obtaining trust fund for liability coverage	†51	265.147(b)(5)					
† add new paragraph; liability coverage may be demonstrated by combination of mechanisms; amount of coverage must total at least the minimum amount required by 265.147; specifying "primary" and "excess" coverage	51	265.147(b)(6)					
1919 add and amend new paragraph; notify Regional Administrator in writing whenever:	51113	265.147(b)(7)					
1919 claims reduce amount of financial assurance for liability coverage	51113	265.147(b)(7)(i)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
1919 Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence is entered between the owner or operator and a third-party claimant	51113	265.147(b)(7)(ii)					
1919 add new subparagraph; final court order establishing judgment for bodily injury or property damage caused by sudden or non-sudden accidental occurrence is issued against the owner or operator or an instrument providing financial assurance	113	265.147(b)(7)(iii)					
insert ", a letter of credit, a surety bond, a trust fund, or a guarantee" after "obtain insurance"; replace "Evidence of insurance" with "Evidence of liability coverage"	†113	265.147(f)(6)					
remove "corporate" before "guarantee"	†51	265.147(g)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
remove "corporate" before "guarantee" in three places; insert "direct or higher-tier" before "parent"; after "parent corporation of the owner or operator" insert ", a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a `substantial business relationship' with the owner or operator"; change "(f)(7)" to "(f)(6)"; add "of this chapter" after "§ 264.151(h)(2)"; replace "The terms of the corporate guarantee must provide that:" with text regarding letter from the guarantor's chief financial officer	†51	265.147(g)(1)					
44 remove and reserve	†51	265.147(g)(1)(ii)					
remove "corporate" before "guarantee"	†51	265.147(g)(2)(i)					
remove "corporate" before "guarantee"	†51	265.147(g)(2)(ii)					
redesignate old 265.147(h) as 265.147(k); add new paragraph titled "Letter of credit for liability coverage"	†51	265.147(h)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
† requirements may be satisfied by obtaining irrevocable standby letter of credit that conforms to 265.147(h) requirements and submitting copy to Regional Administrator	51	265.147(h)(1)					
† criteria for financial institution issuing letter of credit	51	265.147(h)(2)					
† wording of letter of credit must be identical to wording specified in 264.151(k)	51	265.147(h)(3)					
† establishment and use of standby trust fund by owner or operator using letter of credit	113	265.147(h)(4)					
† wording of standby trust fund must be identical to wording specified in 264.151(n)	113	265.147(h)(5)					
† add new paragraph titled "Surety bond for liability coverage"	51	265.147(i)					
† requirements may be satisfied by obtaining surety bond conforming to 265.147(i) requirements and submitting copy to Regional Administrator	51	265.147(i)(1)					
† criterion for surety company issuing bond	51	265.147(i)(2)					

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

FEDERAL REQUIREMENTS	RULE REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
†,21 wording of surety bond must be identical to wording specified in 264.151(l)	51	265.147(i)(3)					
† conditions under which surety bond may be used	51	265.147(i)(4)					
		265.147(i)(4)(i)					
		265.147(i)(4)(ii)					
† add new paragraph titled "Trust fund for liability coverage"	51	265.147(j)					
† requirements may be satisfied by establishing trust fund conforming to 265.147(j) requirements and submitting signed duplicate of trust agreement to Regional Administrator	51	265.147(j)(1)					
† criteria for trustee	51	265.147(j)(2)					
† trust fund must be funded for full amount of liability coverage it is to provide; requirements if fund is reduced below full amount; definition of "full amount"	51	265.147(j)(3)					
† wording of trust fund must be identical to wording specified in 264.151(m)	51	265.147(j)(4)					
former 265.147(h) becomes 265.147(k)	†51	265.147(k)					

¹ Note that there is an error in the Federal Register; "direct of higher tier" should be "direct or higher tier."

RCRA REVISION CHECKLIST 113: Consolidated Liability Requirements (cont'd)

- 2 The September 1, 1988 (53 FR 33938) rule added 264.147(a)(7) and (b)(7) to the code, and the September 16, 1992 rule (57 FR 42832) revised them (including adding 264.147(a)(7)(iii) and (b)(7)(iii)). Note that the preamble of the September 1, 1988 Federal Register incorrectly characterized these paragraphs as less stringent. The September 16, 1992 Federal Register clarified this issue by stating that, in fact, these paragraphs are more stringent because they address an additional reporting requirement. The amendment made by the September 16, 1992 rule made these requirements less stringent than those introduced by the September 1, 1988 rule. Thus, those States that adopted the more stringent September 1, 1988 provisions are not required to adopt the amendments made by the September 16, 1992 rule, although EPA urges them to do so. States that did not adopt the September 1, 1988 requirements at 264.147(a)(7) and (b)(7) should not do so but should adopt the clarified version promulgated by the September 16, 1992 rule.
- 3 Revision Checklist 45 added the reference to miscellaneous units to the first sentence of this paragraph. When the September 1, 1988 rule revised this paragraph, the Revision Checklist 45 change was inadvertently omitted. The July 1, 1991 rule restored the Revision Checklist 45 reference to miscellaneous units.
- 4 Note that only (g)(1)(ii) is removed and reserved; (g)(1)(i) remains as it was prior to the September 1, 1988 final rule.
- 5 Note that there is an error in the Federal Register; "letter or credit" should be "letter of credit".
- 6 The changes addressed by Revision Checklist 113 at this citation are "conditionally optional" because they are linked to whether a State chooses to adopt the Revision Checklist 113 optional changes at 264.143(f)(10), 264.143(f)(11), 265.143(e)(10) and 265.143(e)(11). If a State chooses to adopt the optional changes at 264.143(f)(10), 264.143(f)(11), 265.143(e)(10) and 265.143(e)(11), it must also adopt the changes at this citation. If the State does not adopt those changes, it should not adopt the Revision Checklist 113 changes at 264.151(f).
- 7 The changes addressed by Revision Checklist 113 at this citation are "conditionally optional" because they are linked to whether a State chooses to adopt the Revision Checklist 113 optional changes at 264.147(f)(6) and 265.147(f)(6). If a State chooses to adopt the optional changes at 264.147(f)(6) and 265.147(f)(6), it must also adopt the changes at this citation. If the State does not adopt those changes, it should not adopt the Revision Checklist 113 changes at 264.151(g).
- 8 Note that there are several typographical errors in the Federal Register at 264.151(g) as indicated below:

Federal citation	<u>Federal Register</u> location	Error/Corrections
264.151(g) paragraph 4, line 5	57 <u>FR</u> 42837, column 3	"..'nonsudden' of 'both sudden..' should read "..nonsudden' or 'both sudden.."

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264.151(g), item 3., line 8	57 <u>FR</u> 42838, column 1	"subpart H or 40 CFR parts" should read "subpart H <u>of</u> 40 CFR parts"
264.151(g), Part A, Alternative I.3	57 <u>FR</u> 42838, column 1	"Current \$" should read "Current <u>liabilities</u> \$"
264.151(g), Part B, Alternative II.7., line 5	57 <u>FR</u> 42838, column 3	")____\$____" should be ") \$____

- 9 The changes addressed by Revision Checklist 113 at this citation are "conditionally optional" because they are linked to whether a State chooses to adopt the Revision Checklist 113 optional changes at 264.147(h)(4), 264.147(h)(5), 265.147(h)(4) and 265.147(h)(5). If a State chooses to adopt the optional changes at 264.147(h)(4), 264.147(h)(5), 265.147(h)(4) and 265.147(h)(5), it must also adopt the changes at this citation. If the State does not adopt those changes, it should not adopt the Revision Checklist 113 changes at 264.151(h)(1).

- 10 Note that there are several typographical errors in the Federal Register at 264.151(h)(2) as indicated below:

Federal citation	<u>Federal Register</u> location	Error/Corrections
264.151(h)(2), Guarantee for Liability Coverage, line 15	57 <u>FR</u> 42839, column 3	"or which guarantor is" should read " <u>of</u> which guarantor is"
264.151(h)(2), Guarantee for Liability Coverage, line 19	57 <u>FR</u> 42839, column 3	"264.141(h)]" should read "264.141(h) <u>or</u> 265.141(h)]"
264.151(h)(2), Certification of Valid Claim, line 8	57 <u>FR</u> 42840, column 2	insert "]" after "facility"

- 11 Note that there is a typographical error in the Federal Register; in line three of the revised text of (j)(2)(d) shown at 53 FR 33955, "corportation" should be "corporation".

- 12 Note that there are several typographical errors in the Federal Register at 264.151(k) as indicated below:

Federal citation	<u>Federal Register</u> location	Error/Corrections
264.151(k), Irrevocable Standby Letter of Credit, line 26	57 <u>FR</u> 42840, column 3	insert "]" after "trust fund:"

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264.151(k), (2), 2nd paragraph, lines 2 & 5	57 <u>FR</u> 42841, column 1	delete "]" in "[date]" in line 2 add "]" after "[date]" in line 5
264.151(k), (2), 4th paragraph, line 7	57 <u>FR</u> 42841, column 1	end paragraph with "]"

- 13 Note that there are several errors in the September 1, 1988 Federal Register. Explanatory paragraph 10, as well as the actual text of the revised code, should read "(l)" rather than "(1)" (letter rather than number one). Also, the first sentence of the introductory text for the surety bond should reference "§ 264.147(i) or § 265.147(i)" rather than "§ 264.147(h) or § 265.147(h)".
- 14 Note that the introductory paragraph for 264.151(m)(2) is not clearly distinguished from the preceding and following certifications. In the middle of the third column at 53 FR 33958, the paragraph numbered (2) and ending with "of this acknowledgement." is the introductory paragraph and should have been printed in the larger type size used for such paragraphs. The example of the certification begins "State of".
- 15 Note that there are several typographical errors in the Federal Register at 264.151(n)(1) as indicated below:

Federal citation	<u>Federal Register</u> location	Error/Corrections
264.151(n)(1) Standby Trust Agreement (e)(3)	57 <u>FR</u> 42841, column 3	insert "to" after "Property loaned"

- 16 Note that the September 1, 1988 Federal Register incorrectly labels this paragraph "264.141" rather than "265.141".
- 17 Note that there is an error in the September 16, 1992 Federal Register. In the preamble text at the bottom of the second column at 57 FR 42834, "265.143(e)(11)" should be "265.143(e)(10)".
- 18 Note that an error which appears in the July 1, 1989, 1990 and 1991 CFRs has only been partially corrected in the July 1, 1992 CFR. The July 1, 1989, 1990 and 1991 CFRs incorrectly omit 265.147(a)(1)(i)&(ii) and 265.147(b)(1)(i)&(ii). The September 23, 1991 Federal Register (56 FR 47912) reinstated 265.147(a)(1)(i)&(ii) but erroneously did not reinstate 265.147(b)(1)(i)&(ii). Thus, the July 1, 1992 CFR omits 265.147(b)(1)(i)&(ii). A technical correction will be published in the near future to correct this error. In the meantime, States should include analogous requirements in their regulations.
- 19 The September 1, 1988 rule added 265.147(a)(7) and (b)(7) to the code, and the September 16, 1992 rule revised them (including adding 265.147(a)(7)(iii) and (b)(7)(iii)). Note that the preamble of the September 1, 1988 Federal Register incorrectly characterized these paragraphs as less stringent. The September 16,

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1992 Federal Register clarified this issue by stating that, in fact, these paragraphs are more stringent because they address an additional reporting requirement. The amendment made by the September 16, 1992 rule made these requirements less stringent than those introduced by the September 1, 1988 rule. Thus, those States that adopted the more stringent September 1, 1988 provisions are not required to adopt the amendments made by the September 16, 1992 rule, although EPA urges them to do so. States that did not adopt the September 1, 1988 requirements at 265.147(a)(7) and (b)(7) should not do so but should adopt the clarified, less stringent version promulgated by the September 16, 1992 rule.

- 20 The Federal Register for Revision Checklist 51, in Item 3. in the first column at 53 FR 33959, erroneously indicates that 265.147(b)(5) is a new paragraph to be added. In fact, this final rule replaces the old 265.147(b)(5) with a new paragraph (b)(5).
- 21 Note that there is a typographical error in the Federal Register "264.151(1)" [number 1], should be "264.151(l)" [letter l].